SINGAPORE REPORTS.

TAY CHOON NAM & 2 OTHERS vs. REX *.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J.) October 15, 1948]

[Singapore — Magistrate's Appeals Nos. 118 & 119 of 1948]

Prevention of Corruption Ordinance 1937, S. 3(b) — Evidence of accomplice — Corroboration — Credibility of witness — Conclusions of fact of trial Judge based on estimate of witness.

In this case one of the grounds of appeal was that the learned District Judge was wrong both in law and in fact in convicting the accused on the evidence of a witness, who was an accomplice.

Held, (1) that it was clear from the judgment of the District Judge that he was fully aware of the danger of acting on the uncorroborated evidence of an accomplice and nevertheless acted on such evidence and therefore the conviction could not be interfered with; (2) that as the conclusions of fact of the trial judge were based on his estimate of the witness, whom he saw and heard, such conclusions should not be interfered with.

Cases referred to :—

(1) *R. v. Baskerville* (1916) 2 K.B. 658.
(2) *Rex v. Lim Yam Hong* 14 S.S.L.R. 152.
(3) *Abdul Rahman v. Public Prosecutor* (1940) M.L.J. 55.
(4) *Trowell v. Public Prosecutor* (1946) M.L.J. 41.
(5) *Lawson v. Public Prosecutor* (1946) M.L.J. 52.
(6) *Rex v. Ambler* 1940 English and Empire Digest.
(7) *Yuill v. Yuill* (1945) 1 A.E.R. 183.
(8) *Watt v. Thomas* (1947) 1 A.E.R. 582.
(9) *S. S. Hontestroom v. S. S. Sajaporack* (1927) A.C. 37.

MAGISTRATE'S APPEALS.

Sir Roland Braddell for the Appellant.

A. V. Winslow (D. P. P.) for the Respondent.

Gordon-Smith, Ag. C. J. : — These are appeals by the three accused who were convicted by the District Judge, Singapore, on the 25th June 1948 of offences under the Prevention of Corruption Ordinance, No. 41 of 1937, s. 3 (b)

The first two accused were charged jointly with having corruptly given to a 2nd Lieutenant in the R.A.O.C. three separate amounts in cash, namely, $500 in November 1947, $1,000 in December 1947 and $500 in January 1948. The third accused was charged with abetment of these offences. The first accused is the sole proprietor of Chop Nam Koh, Commission Agents and General Contractors, the 2nd accused is his younger brother who is employed by him, and the 3rd accused is a clerk, an English speaking Eurasian, similarly so employed.

At the conclusion of the case all three accused were convicted as charged and the learned District Judge sentenced the 1st accused to 9 months and the other two accused to 6 months, each, R.I. on each count, the sentences to run concurrently. Notice of appeal was given forthwith and the grounds of judgment are attached to the record.

The Petition of Appeal was filed on the 5th August and the appeal was heard by me on the 5th October, Sir Roland Braddell appearing for the appellants and Mr. Winslow, D. P. P., for the Crown, and at the conclusion of the hearing I reserved judgment.

Apart from one or two criticisms on the evidence itself the grounds of appeal are as follows :—

(a) that the learned District Judge was wrong both in law and in fact, in accepting the evidence of P.W.I. (the 2nd Lieut.);
(b) such evidence was uncorroborated and unworthy of credence and conflicted with that of P.W. II (Major Ruse R.A.O.C.);
(c) that a shortage of tentage not having been proved (as found by the D.J.) such fact rebutted the presumption contained in s. 5 of Ordinance 41 of 1937, and that the District Judge was wrong in considering that this shortage was not an essential issue in the case.

As regards ground (a), the fact that P.W. 1 was an accomplice was never disputed by the Prosecution or by the District Judge, nor was such fact disputed before me. The point is, firstly, was the District Judge wrong in law in accepting such evidence? Nor was there any conflict as to what the law is, which is well settled and I need only refer to it briefly. It is to be found in *R. v. Baskerville*[1] and the rules laid down therein are admirably summarized by Woodward, Ag. C.J. in *Rex v. Lim Yam Hong*[2] at p. 156 as follows :—

i. The uncorroborated evidence of an accomplice is admissible and a conviction founded on such evidence is not illegal.
ii. But it is a rule of practice equivalent to a rule of law that the presiding judge must warn the jury of the danger of convicting on such evidence.
iii. It is also his duty to tell them that nevertheless they can legally convict on such evidence.
iv. When it appears that the judge has not given the required warning, the Court of Appeal will quash the conviction.

* In this case an application to the Privy Council for special leave to appeal was disallowed but the decision of the Board has not yet been received. Ed. M.L.J.

v. One accomplice cannot corroborate another.

vi. The corroboration must be evidence which implicates the accused. Evidence tending merely to show that a crime has been committed is insufficient.

At pp. 159 and 160 the learned Judge dealt with the position of a District Judge or Magistrate sitting alone and the necessity to advise himself of these principles and goes on to say :—

> If he ignores or disregards any of these principles, then I think it is the duty of this Court to quash the conviction, **but if it appears that he has clearly present in his mind the danger of convicting on the unconfirmed evidence of an accomplice, but nevertheless believes that evidence** and convicts, this Court will not interfere with the conviction merely on the ground of the want of corroboration.

Whitley, J. in the same case gave judgment to similar effect. There have been many cases of failure to observe these principles and in consequence convictions have been quashed (*Abdul Rahman v. P. P.*[3]; *Trowell v. P. P.*[4]; *Lawson v. P. P.*[5] are examples).

In *Trowell's* case Horne, J., at p. 41 quoted *Rex v. Ambler*[6], a Canadian case of a trial by a Judge alone which reads :—

> If he sees fit to convict in face of admonitions of Courts past and present as to the danger of convicting on the uncorroborated evidence of an accomplice, he is at liberty to do so and his conviction will stand, provided he shows that the danger of so doing is present in his mind and the judgment is not otherwise objectionable.

It remains to be seen whether such danger was present in the District Judge's mind and whether the judgment is otherwise objectionable.

It is not disputed that the appellants' firm had purchased from the Army in the latter part of November 1947 a quantity of unserviceable tentage amounting to approximately 150 tons at a price of $17,250. It is in connection with the delivery of this tentage that it is alleged that the bribery occurred, the suggestion being that a much larger quantity than 150 tons was to be or was in fact taken away by the purchasers. Neither is it disputed that there was no sufficient evidence to prove in fact that a larger quantity was issued to be removed by the contractors. The first witness was the 2nd Lieutenant who was in charge of the Tent Store, the 2nd witness being Major Ruse, the O.C. of this Depot. P.W. 1 details how the 2nd accused came to him, before delivery, with some suggestion of mutual help over the tentage and that the same day he reported to P.W. 2 but without disclosing any details or implicating the accused. He merely reported that some contractors appeared to be trying to suggest an illegal deal. The latter advised him that he could either ignore it or set a trap.

The same evening P.W. 1 went to the offices of the accused and met all three accused and he remained with them for some time in general conversation. The tentage contract was not mentioned, but No. 2 accused gave him $500, the purpose of which was not stated.

Later, while the tentage was being collected, he was invited out to dinner by No. 3 accused when he met the other two accused and during the course of dinner was given $1,000 cash, nothing being said as to the purpose of the payment. A little after the completion of delivery, he was again invited out to dinner and met the three accused again. Accused No. 2 gave him $500 in cash and No. 3 accused thanked him for his services and said that he hoped P.W. 1 would be able to help them again.

This, briefly, is the story told by P.W. 1. It is in evidence that he was court-martialled but what for or with what result was not disclosed. P.W. 1 was cross-examined at some length and, *inter alia,* about an Army form 108 but such was not produced. In this respect the District Judge found that it was not proved that an excess of tentage had been issued to the accused and in any case that this was not an essential issue.

The three accused only gave evidence completely denying the whole story told by P.W. 1.

For the appellants Sir Roland Braddell went through the evidence and the judgment with a hair comb, if I may so describe his analysis, and it is necessary to consider some of his criticisms.

I agree that there is a slight conflict between P.W. 1 and 2 as to the date that P.W. 1 first reported to him but this is quite immaterial and the fact remains that he did report and their respective accounts of such report substantially tally. The District Judge quite clearly held that this confirmation of the report was not corroboration against the accused. *Prima facie* there is some slight variation between P.W. 1 and 2 as to the details of the conversation but it is to be noted that neither of them was cross-examined in this respect. The District Judge only regarded this evidence, not as corroboration against the accused but merely as confirmation of the evidence of P.W. 1 that he had reported to P.W. 2.

Sir Roland also complained that the specific intention behind the alleged gift of money to a Government servant had not been specified in the charge and the District Judge had overruled counsel in this respect. The District Judge deals with this point in his judgment and I agree with him.

The charge alleges a corrupt gift and in the absence of direct evidence on the point, how is such an intention to be proved except by inference from facts and circumstances surrounding the gift?

Assuming the gift of money to be proved, what are the surrounding circumstances in this case? Here, you have a Chinese firm of Commission Agents and Contractors who have contracted to buy a 150 tons of surplus tentage being disposed of by an Army Disposals Board. Such is supposed to be unserviceable and I say, advisably unserviceable and not unusable. It is lying in dumps, cheek by jowl with a lot of other tentage, both serviceable and other unserviceable tentage not purchased by the contractors. The amount purchased was lying in two dumps. There was no lot number and apparently it was unweighed when delivery was made and as P.W. 5 said in cross-examination "If the lot contained 175 tons, contractor would have had it". This witness was the storekeeper responsible for the delivery to the Contractor. It was taken away in small issues unweighed. Admittedly Army forms were completed shewing the correct amount as having been delivered.

If you believe P.W. 1, you have these Contractors insiduously making an approach to the officer in charge of the tentage, a very junior officer (and probably very young but such fact is not in evidence) and this officer, after being hospitably entertained on various occasions by these contractors whom he did not know previously, is given $2,000 in three separate amounts and on three separate occasions. The intention and motive behind the gift is obvious and the presumption in s. 5 of Ordinance No. 41 of 1937 arises.

A further criticism was that the evidence of P.W. 1 was in conflict with that of P.W. 5 in regard to Army form 108. The former said that he gave orders to P.W. 5 "that the entries on Form 108 (relating to part issues) should be entered as 1 ton per lorry instead of 2½ tons. This instruction was carried out." P.W. 5 says "P.W. 1 told me to issue the 150 tons and make out necessary vouchers on A.B. 108". I can see no conflict here.

It is abundantly clear from the judgment that the District Judge had in mind the whole time the principles laid down in the *Baskerville* and other cases. Moreover counsel for the defence had specifically stressed the danger of convicting on the uncorroborated evidence of an accomplice, in his final address.

He states in his judgment "I was fully aware of the danger of acting on the uncorroborated evidence of an accomplice. But in this case I did so without hesitation." As regards P.W. 1, he states "I was unable to believe that the complainant" (P.W. 1) "would have invented such allegations with such particularity merely to satisfy pique. Such conduct did not appear to me consistent with his bearing in Court and I was satisfied from his manner that he was telling the truth."

On this point of the credibility of a witness, seen and heard by a trial Judge and the inestimable advantage of so doing which advantage is not possessed by an appellate Court, I have considered the case of *Yuill v. Yuill*[7] quoted by Sir Roland Braddell, and also the later case of *Watt v. Thomas*[8] and in particular the principles in regard thereto enunciated by Lord Thankerton at p. 587. Both these cases were civil matrimonial cases on appeal dealing mainly with findings of fact by a trial Judge on the evidence before him, when he had the advantage of seeing and hearing the witnesses. One has only to read the analysis of the evidence by Lord Greene in the *Yuill* case to appreciate that the inferences drawn by the trial Judge from admitted or proved facts were completely wrong. I would merely quote further a remark by Lord Sumner in his judgment in *S. S. Hontestroom v. S. S. Sajaporack*[9] "If his estimate of the man forms any substantial part of the reasons for his judgment, the trial Judge's conclusions of fact should, as I understand the decisions, be left alone."

I do not agree with Sir Roland when he says that P.W. 1 has been shown to be a complete scoundrel. It may well be that he succumbed to the temptation put before him by the accused in handing him the first sum of $500 and was the start of his downfall. This was after he had reported to his superior officer about the suggestion of bribery.

It follows that I agree with and confirm the District Judge's judgment and conviction and the appeals will be dismissed, but I am not at all satisfied that the sentence is adequate for a case of this nature. According to general repute cases of this nature are numerous and this is particularly likely to be so where, after a war, there are huge surplus Army supplies, dumped all over the country, inadequately guarded and inadequately checked, to be disposed of. At the same time it is extremely difficult to obtain sufficient and satisfactory evidence upon which to secure a conviction. When such is obtained, then, in my opinion, the sentence should be an exemplary one. The maximum

sentence under s. 4 of the Ordinance is 7 years imprisonment and/or a fine of $5,000. Accused No. 1 is the proprietor of the firm, the other two being employees. I increase the sentence of No. 1 accused by the addition of a fine of $2,500 and in default of payment, a further 9 months imprisonment.

Appeals Dismissed.

DEPUTY PUBLIC PROSECUTOR v. ISAAC ELION.

[App. Cr. Juris. (Gordon-Smith, J.) May 11, 1949]

[Singapore — Mag. App. No. 1 of 1949]

Finance Regulations, Ss. 6 and 7 (2) — Finance Regulations Proclamation No. 36 of 1946 — Registration of Imports and Exports Ordinance (Cap. 41), S. 8 (1).

This was an appeal by the Deputy Public Prosecutor against the sentence passed by the District Judge on the grounds of its inadequacy.

The Respondent was charged with two currency offences namely, firstly under S. 6 of the Finance Regulations punishable under S. 7(2) of the Finance Regulations Proclamation No. 36 of 1946 and secondly under S. 8(1) of the Registration of Imports and Exports Ordinance (Cap. 41). Both offences arose out of one and the same business transaction. The sentences imposed were fines of $500/- on the first charge and $100/- on the second charge.

The grounds of Judgment of the learned District Judge in respect of these sentences is not very exhaustive but can be interpreted as being that the offence was a novel one; that it was a first prosecution under these Regulations; that the prosecution had not pressed for a severe penalty; that the learned District Judge thought it right not to be vindictive and that a fine of £70.0.0 was not nominal.

Held, that before an Appellate Court interfered with the sentence of the Court below, the Appellate Court had to be satisfied that the sentence was wrong either in law or that it was manifestly excessive or inadequate on the facts and circumstances.

Cases referred to:—

(1) *Liow Chow & Anor. v. Public Prosecutor,* (1939) F.M.S.L.R. 35; (1939) M.L.J. 170.

(2) *Abdul Rahman v. Public Prosecutor,* (1938) M.L.J. 219.

MAGISTRATE'S APPEAL.

A. D. Farrell (D. P. P.) for the Appellant.

J. K. Gale for the Respondent.

Gordon-Smith, J. : — In this case the D.P.P. appealed against the sentence passed by the District Judge on the grounds of its inadequacy.

The Respondent was charged with two currency offences namely, firstly under Section 6 of the Finance Regulations punishable under Section 7 (2) of the Finance Regulations Proclamation No. 36 of 1946 and secondly under Section 8 (1) of the Registration of Imports and Exports Ordinance: Cap. 41. Both offences arose out of the one and the same business transaction.

The Respondent pleaded guilty and no evidence was recorded but a full statement by Mr. C. Williams was made and recorded, giving details of this transaction, to which Mr. Seth for the Respondent pleaded extenuating circumstances, and to which Mr. Williams replied, stating finally that it was the first offence that had been detected so far and that he had been given every opportunity to see all documents by the two firms concerned. The sentences imposed were fines of $500.00 on the 1st charge and $100.00 on the 2nd charge.

The grounds of Judgment in respect of these sentences is not very exhaustive but can be interpreted as being that the offence was a novel one; that it was a first prosecution under these Regulations; that the Prosecution had not pressed for a severe penalty; that the learned District Judge thought it right not to be vindictive and that a fine of £70. 0. 0. was not nominal.

The facts and circumstances are rather complicated and arise out of a contract made by the Respondent Branch in Hong Kong on behalf of a customer there for the supply by a New York firm to the customer at Hong Kong of certain material at a price of 56½ cents U.S.A. per yard (equivalent to $1.18 cents Straits per yard). For reasons, not material, the customer in Hong Kong was unable or unwilling to complete the contract and contact was established between the Hong Kong and Singapore Branches and the New York firm with the result that this material was diverted from shipment to Hong Kong to the Respondent's Branch in Singapore. The Singapore branch was to pay 65 cents per yard for this material to the New York firm leaving the Hong Kong branch to pay the balance of 53 cents to the New York firm, which no doubt the Hong Kong branch would recover from their defaulting customer. The New York firm would therefore receive the original contract price of $1.18 (Straits).

The price therefore to the Singapore branch was 65 cents per yard, although the value was much greater, the original contract price having been $1.18.

It was necessary therefore for the Singapore Branch to apply for hard currency in order to pay its purchase price to the the New York firm of 65 cents per yard and they did so by A.P. of the 24th February 1948,